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educational assistance, VA will apply the provisions of § 21.4131.

(Authority: 38 U.S.C. 5113)

[61 FR 26109, May 24, 1996]

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates effective January 1, 1990:

Type of courses	Monthly rate
Institutional:	
Full time	\$404
¾ time	304
½ time	202
Less than ½ but more than ¼ time ³	202
¼ time or less ³	101
Cooperative (other than farm cooperative) (Full time only).	\$327
Apprentice or On-Job (full time only, but see footnote 1)	
First six months	\$294
Second six months	220
Third six months	146
Fourth six months and thereafter.	73
Farm Cooperative:	
Full time	\$327
¾ time	245
½ time	163
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. ²

¹ See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

² Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is the lesser. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

³ If an eligible person under chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$202 or \$101 as appropriate, per month, if the maximum allowance is not initially authorized.

(Authority: 38 U.S.C. 3532, 3686)

(b) *Less than half time.* The monthly rate for an eligible person who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course computed on basis of the total cost for tuition and fees which the school requires similarly

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circumstanced individuals enrolled in the same course to pay. “Cost of the course” does not include the cost of books or supplies which the student is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 3532(a)(2))

(c) *Courses leading to a secondary school diploma or equivalency certificate.* The monthly rate of Survivors’ and Dependents’ Educational Assistance payable for an eligible person enrolled in a course leading to a secondary school diploma or equivalency certificate shall be the rate for institutional training stated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3532(d), 3533)

(d) *Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos.* When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child’s entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter, payments of educational assistance allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.

(Authority: 38 U.S.C. 3532(d), 3565)

[61 FR 26110, May 24, 1996]

§ 21.3132 Reductions in survivors’ and dependents’ educational assistance.

The monthly rates established in § 21.3131 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *No educational assistance allowance for some incarcerated eligible persons.* VA will pay no educational assistance allowance to an eligible person who:

(1) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(2) Is enrolled in a course:

(i) For which there are no tuition or fees, or charges for books, supplies, and equipment; or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and the eligible

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person is incurring no charge for the books, supplies, and equipment necessary for the course.

(Authority: 38 U.S.C. 3532(e))

(b) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) VA will pay a reduced educational assistance allowance to an eligible person who:

(i) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(ii) Is enrolled in a course:

(A) For which the eligible person pays some (but not all) of the charges for tuition and fees; or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the eligible person to pay for books, supplies, and equipment.

(2) The monthly rate of educational assistance payable to such an eligible person who is pursuing a course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or

(ii) The monthly rate stated in § 21.3131.

(3) The monthly rate of educational assistance payable to such an eligible person who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course;

(ii) The monthly rate of tuition and fees which the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or

(iii) The monthly rate stated in § 21.3131.

(Authority: 38 U.S.C. 3482(g))

(c) *Reduction in training assistance allowance.* (1) For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training, VA shall reduce the rate specified in

§ 21.3131(a) proportionally. In this computation VA shall round the number of hours worked to the nearest multiple of eight.

(2) For the purpose of this paragraph *hours worked* include only:

(i) The training hours the eligible person worked; and

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages.

(Authority: 38 U.S.C. 3687(b)(3))

(d) *Mitigating circumstances.* (1) VA will not pay benefits to any eligible person for a course from which the eligible person withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless the provisions of this paragraph are met.

(i) The eligible person withdraws because he or she is ordered to active duty; or

(ii) All of the following criteria are met:

(A) There are mitigating circumstances;

(B) The eligible person submits a description of the circumstances in writing to VA either within one year from the date VA notifies the eligible person that he or she must submit the mitigating circumstances or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(C) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a); Pub. L. 102-127)(Aug. 1, 1990)

(2) The following circumstances are representative of those which the Department of Veterans Affairs considers to be mitigating provided they prevent the eligible person from pursuing the

program of education continuously. This list is not all inclusive.

- (i) An illness of the eligible person,
- (ii) An illness or death in the eligible person's family,
- (iii) An unavoidable geographical transfer resulting from the eligible person's employment,
- (iv) An unavoidable change in the eligible person's conditions of employment,
- (v) Immediate family or financial obligations beyond the control of the eligible person which require him or her to suspend pursuit of the program of education to obtain employment,
- (vi) Discontinuance of a course by a school,
- (vii) Unanticipated active duty for training,
- (viii) Unanticipated difficulties in caring for the eligible person's child or children.

(Authority: 38 U.S.C. 3680)

(3) If the eligible child fails to complete satisfactorily a course of special restorative training or if the eligible person fails to complete satisfactorily a course under section 3533, Title 38 U.S.C., without fault, the Department of Veterans Affairs will consider the circumstances which caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(4) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the eligible person received educational assistance under title 38 U.S.C. or under chapter 1606, title 10 U.S.C., VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. Eligible persons to whom the provisions of this subparagraph apply are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

(Authority: 38 U.S.C. 3680(a)(4); Pub. L. 100-689)

(5) If an eligible person withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating. Eligible persons who withdraw from a course during a drop-add

period are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

(Authority: 38 U.S.C. 3680(a))

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4137, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 21.3133 Payment procedures.

(a) *Release of payments and payment procedures.* In determining whether payments of educational assistance allowance may be made in a lump sum, in advance, for an interval or if a certification is required from an eligible person before a payment may be made, VA will apply the provisions of § 21.4138.

(Authority: 38 U.S.C. 3680)

(b) *Payee.* (1) VA will pay an educational assistance allowance to the eligible person if he or she has attained majority and has no known legal disability.

(2) If an eligible person has not attained majority, VA will pay an educational assistance allowance directly to an eligible person, a relative, or some other person for the use and benefit of the eligible person notwithstanding a legal disability on the part of the eligible person when VA determines:

- (i) The best interest of the eligible person would be served;
- (ii) Undue delay in payment would be avoided; or
- (iii) Payment would otherwise not be feasible.

(Authority: 38 U.S.C. 3501(a)(4), 3501(c), 3531(a), 5502)

(c) *Payment of accrued benefits.* Educational assistance remaining due and unpaid at the date of the eligible person's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(d) *Tutorial assistance.* An individual who is otherwise eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance,